Four Seasons Hotel d/b/a Four Seasons Olympic Hotel *and* Washington Employees in Service Trades. Case 19-CA-14774

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 18 January 1984 Administrative Law Judge Richard D. Taplitz issued the attached decision. The Charging Party filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

RICHARD D. TAPLITZ, Administrative Law Judge. This case was tried in Seattle, Washington, on June 14 and 30 and November 8, 1983.[1] The charge was filed on July 6, 1982, by Washington Employees In Service Trades (the Union). The complaint, which issued on February 7, 1983, and was amended on June 2, 1983, and at the trial, alleges that Four Seasons Hotel d/b/a Four Seasons Olympic Hotel[2] (Respondent or the Hotel) violated Section 8(a)(1) of the National Labor Relations Act, as amended.

Issue

The sole issue is whether various supervisors of Respondent coercively interrogated applicants for employment about their union sympathies during preemployment interviews.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, Respondent, and the Charging Party.[3]

On the entire record[4] of the case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a State of Washington partnership with an office and place of business in Seattle, Washington, where it is engaged in the business of operating a hotel known as the Four Seasons Olympic Hotel. During the year immediately preceding issuance of complaint, Respondent had gross sales of over $500,000 and directly and indirectly received goods from outside of Washington valued in excess of $50,000. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Respondent also admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

For many years the hotel which is now operated by Respondent was known as the Olympic Hotel. It employed approximately 700 employees. Sometime before the incidents involved in this case took place, the Olympic Hotel was closed and all the employees let go. Respondent undertook an extensive renovation project which resulted in reopening the hotel under Respondent's auspices on May 23, 1982. By that time Respondent had employed about 400 employees and subsequently the employee complement rose to 450. A total of some 15,000 applicants sought the available 450 jobs. Of the 700 employees who had formerly worked for the Olympic Hotel, about 300 applied for employment with Respondent. About 60 of those 300 were hired.

In the charge that was filed on July 6, 1982 the Union alleged that Respondent interrogated employees about union matters and refused to hire qualified applicants because they expressed prounion sympathies or were union members. The Union placed a notice in a local newspaper asking rejected applicants to contact the Union if the

[1] The trial originally closed on June 30. Thereafter, the unopposed motion of the General Counsel to reopen the record because of newly discovered evidence was granted. The trial resumed and closed on November 8.

[2] The complaint and other pleadings were amended at the trial to show the correct name of Respondent.

[3] In its brief the Charging Party renewed its motion to admit certain documents that had been rejected during the course of the trial. That motion is denied.

[4] The original exhibit file submitted by the reporter contains many errors. At my request the parties submitted a stipulation dated December 16, 1983 to supplement that file. The stipulation is received in evidence and has been marked ALJ Exh. 1. It has been placed at the beginning of the General Counsel's exhibits for November 8, 1983.

applicant thought he or she was not hired because of race, sex, union membership, or age.

The complaint was very narrowly drafted. It alleged that various supervisors violated Section 8(a)(1) of the Act by unlawfully interrogating employees concerning union membership or sympathies. Those were the only issues litigated.

The General Counsel called five witnesses who testified that they were applicants for employment and that they had certain conversations with supervisors. The supervisors, who allegedly spoke to those employees, also testified. There was a sharp conflict in testimony and much of the case turns on credibility considerations.

Respondent has an established hiring procedure. An applicant first fills out an application form. He or she then receives an initial interview from someone in the personnel department. References are then checked and there is a second interview by a department head. Successful applicants have a third interview by a division head and a final interview by the general manager or assistant executive.

Debbie Brown has been Respondent's director of personnel since February 1, 1982.[5] She testified that as the director of personnel she spoke to other supervisors and told them how to handle questions concerning the Union that might come up. She told them that if employees asked whether it would be a union house, the supervisor was to reply that the decision was up to the employees. She also averred that she told them that they could state facts about the Union, state their personal opinions, discuss company policy, correct misunderstanding, and listen to what employees said about the Union but that they could not discharge, promise, interrogate, threaten, or spy.

Brown's credibility is at issue because she is one of the supervisors who allegedly engaged in coercive interrogation of an employee. On the night of June 20, 1982, Brown prepared an internal company memo. Part of that document was entitled "Maintaining Non-Union Status" and stated, "1. Recruitment and selection of non-union oriented personnel. Thorough reference checks . . . 11. Hire and identify employees who would actively campaign against the Union . . ."[6] Brown testified in substance that she had been asked to prepare a "labor update"; that she approached it as a "brainstorming session"; that she wrote down everything she could think of as part of a "throwing out of ideas"; that she presented the entire document the following morning to Respondent's labor counsel Arch Stokes; and that Stokes rather dramatically told her that it was all garbage and to forget it. Stokes in his testimony corroborated Brown's version of the incident. He averred that he told her there was no need to have a strategy to ferret out union and nonunion people; that the Union should be given free access to sell the employees on the need for representation; that the Union had not successfully organized a major luxury hotel in that area of 10 years; and that his advice was for the hotel to do nothing except to hire the best qualified people for the job without worrying about whether they were for or against the Union. Brown testified that she thought she threw the memorandum out. Management Consultant Cary Bonworth averred that he was the last to leave the room on that day and he saw some papers on the table, one of which was the memorandum. He also averred that he found those papers much later in the course of some legal preceedings after his attorney asked him to make a search but that he was not aware of the contents of the papers until then.

The memorandum certainly shows that Brown was capable of ideas which if carried out would have been unlawful. However, I do not believe that her memorandum with regard to those ideas seriously affects her credibility with regard to the specifics of a particular conversation with an employee. I am satisfied that the memorandum does not represent company policy and that no inference is warranted that Brown took action to implement her "brainstorming" memo. Resolutions with regard to Brown's credibility must be made by comparing her demeanor and the internal logic of her testimony with those of the opposing witness.

B. *The Testimony of Timothy McGraw*

Timothy McGraw sought employment with Respondent in February or early March 1982. He testified that three different supervisors asked him questions about the Union.

McGraw averred that he first called Debbie Brown and spoke to her on the phone. He testified that she asked him whether the Park Hilton Hotel, where he was then working, was nonunion; that he replied that it was; that she told him that Respondent was also going to be nonunion; and that she asked him whether that bothered him. Brown testified that she had no recollection of any conversation with McGraw but that she never had such a conversation with any applicant. She averred that she never discussed unionization with an applicant and that if an applicant asked whether Respondent would be union she always told him that it would be up to the employees.

McGraw testified that shortly after his conversation with Brown he was interviewed by the Assistant Director of Personnel Gretchen Shideler in the company office at the hotel. According to McGraw, Shideler said there was a possibility of a picket line and asked him whether that would bother him. McGraw averred that she asked him how he would vote in a union election. After having his memory jogged by leading questions, he testified that she mentioned that it would be a nonunion hotel. Shideler, in her testimony, flatly denied having such a conversation with McGraw. She specifically denied asking him whether he would mind crossing a picket line or asking him how he would vote in a union election. She averred that she had interviewed hundreds of applicants and if someone asked if there was a union, she told him it was up to the employees.

[5] The answer admits and I find that Brown as well as Assistant Director of Personnel Gretchen Shideler, Dining Room Manager Dominic Alvarez, and Rooms Division Manager Cathleen Horgan were supervisors within the meaning of the Act. Director of Catering Richard Wegscheider was hired by Respondent on February 28, 1982, and from that date on he was a supervisor within the meaning of the Act.

[6] This document was obtained from Respondent through a subpoena in a collateral proceeding in another forum.

McGraw testified that about 2 weeks after his conversation with Shideler, he was interviewed by Rooms Division Manager Cathleen Horgan at the hotel. He averred that she said that the hotel was going to be nonunion; she asked him how he felt about working at the Park Hilton; and that she said in a questioning way that Respondent was going to be a nonunion hotel. Horgan, in her testimony, denied the substance of McGraw's assertions. She averred that McGraw said that he liked his job at the Park Hilton because it was nonunion and he asked her if Respondent was going to be union or nonunion. According to Horgan she replied that it would be the decision of the employees as to whether or not to join the Union.

The demeanor of Brown, Shideler, and Horgan as they testified was such as to give a basis for having confidence in their veracity. That was not true with regard to McGraw. His assertion that Brown interrogated him concerning a union matter in an initial telephone conversation is difficult to believe. He was only one of 15,000 applicants, of whom over 4,000 were interviewed, yet he is the only witness whose testimony implicated Brown in improper questioning. She was the personnel director and it is most unlikely that she got into the type of detailed conversation with a random applicant at that stage of the application. It is even more unlikely that she would engage in such a conversation with an unknown person on the telephone. Shideler was also a believable witness. McGraw's testimony did not fit into any pattern. No one else testified that a supervisor asked how an employee would vote at an election. Indeed, Tony Von Neudegg, who testified on behalf of General Counsel with regard to a conversation with a different supervisor, averred that in his interview with Shideler he asked her if the hotel was going to be union and she replied that it was up to the employees to make that decision. That is consistent with what Brown told the supervisors to say and also with regard to what Shideler testified she did tell applicants. With regard to Horgan, her testimony was fully believable.

In sum, I credit Brown, Shideler, and Horgan and I do not credit McGraw.

C. *The Testimony of Tony Von Neudegg*

Tony Von Neudegg was employed at the Edgewater Inn. He applied for a job with Respondent and had two interviews in March 1982. The first was with Shideler. Von Neudegg asked Shideler whether the hotel was going to be union and Shideler replied that it would be up to the employees to make that decision. Shideler did not ask him about his union affiliation.

The second interview was with Dominic Alvarez, the manager of one of Respondent's dining rooms. Von Neudegg testified that during the course of the interview Alvarez asked him whether he was a union member and whether he would like the hotel to be a union house. Alvarez, who interviewed about 200 applicants, testified that he had no independent recollection of an applicant named Von Neudegg. Alvarez, in his testimony, flatly denied that he ever asked any applicant whether the applicant was a union member or whether the applicant would like the hotel to be a union house. He testified that a few applicants did raise questions about the Union and in all such cases, he told them that he did not know and they should ask those questions to the personnel department. He denied that he made any comment to applicants about the Union.

The testimonial demeanor of both Von Neudegg and Alvarez was impressive. However, some of the circumstances surrounding the conversation are such as to give support to Alvarez' version of the conversation. Alvarez impressed me while he was testifying as a man who is extremely cautious. He is and was a union member. At the same time he was a supervisor who took part in the hiring process. His assertion that he simply ducked questions about the Union and referred them to the personnel department was quite believable. Moreover, Alvarez was a man of considerable experience in the area. His examination of Von Neudegg's work history on the application would in all probability have given Alvarez a strong indication of whether Von Neudegg was or was not a union member. There would have been little need for Alvarez to ask the question and to expose himself to possible difficulties. It is also likely that Alvarez used the same basic pattern in interviewing the 200 applicants he spoke to. Von Neudegg is the only witness who testified concerning Alvarez. Though it is of course possible that Alvarez interrogated all 200 applicants about their union membership and that none except for Von Neudegg was available to testify, it is even more possible that there were no corroborative witnesses because Alvarez was telling the truth. In sum, I credit Alvarez and I do not credit Von Neudegg.

D. *The Testimony of Barton, Johnson, and Light*

1. The individual conversation between Barton and Wegscheider

Richard Wegscheider is Respondent's director of catering. He worked in management positions in the Olympic Hotel from 1972 to 1979 when he began working for the Doubletree Hotel in Seattle. He worked at the Doubletree until February 15 or 20, 1982, and began working for Respondent on February 28, 1982.

In January 1982, Wegscheider called Dolores Barton, with whom he had formerly worked at the Olympic. He asked her whether she would be interested in a private catering job. That job was not connected in any way to Respondent. At that time Wegscheider was still working for the Doubletree Hotel. However, he had an application for employment pending with Respondent. He was not offered a job until mid-February.

Barton testified that after speaking about the catering job, Wegscheider asked whether she had thought about going back to work for the Olympic. She averred that she answered by saying that she had not really considered it and that she was working enough hours where she was. She also averred that they spoke about whether or not it was going to be a union house; that he asked her how she felt about working for a nonunion house; and that she answered that she really had not thought about it much. Wegscheider testified that there was no

conversation about the Union when he spoke to Barton at that time.

Nothing in the demeanor of either Wegscheider or Barton gave reason to doubt their testimony and there is little basis for making a determination as to whose memory was more accurate. They had known each other for a long time and were on a friendly basis so it is not improbable that Wegscheider, who was seeking employment with Respondent, would have spoken of union problems. On the other hand, Wegscheider had called about a catering job and the remarks attributed to Wegscheider by Barton concerning the Union bore no relation to the purpose of the call. In a later conversation, which is discussed below, there was a conversation concerning the Union and it may well be that Barton confused remarks made in that conversation with the earlier telephone conversation. Though it is not free from doubt, I believe that Wegscheider's version of the conversation was more reliable and I therefore credit him. In any event there is no evidence that at that time Wegscheider was a supervisor or agent of Respondent. Nor was there any evidence that Respondent had given Wegscheider any real or apparent authority to act on its behalf. In January 1982 Wegscheider was himself merely an applicant for employment with Respondent and he had no role in the hiring process.

2. Wegscheider's conversation with Barton, Johnson, and Light

When Wegscheider worked at the Olympic Hotel before it closed, he had supervised employees Darleen Johnson, Dolores Barton, and Sada Light. They all got along well and Wegscheider liked their work.

Wegscheider began working for Respondent on February 28, 1982. Shortly thereafter, while he was at the hotel, he saw Darleen Johnson filling out an application for employment. He made an appointment for her to come and see him on March 24, 1982. At the same time he asked her to bring Dolores Barton and Sada Light with her. He told Johnson that he wanted to talk to all three of them about positions that were open in the banquet department.

On March 24 Wegscheider met with Johnson, Barton, and Light at the hotel. They discussed the positions that were available. There was a discussion in which the Union was mentioned. All four participants to the conversation testified.

Johnson averred that she asked whether the hotel would be union; Wegscheider said that as far as he knew it would not be union; and he asked her how she felt about that.

Barton testified that Johnson asked Wegscheider whether or not it would be a union house; that Wegscheider said that he did not think it would be a union job; and Wegscheider asked them how they felt about working for a nonunion hotel.

Light testified that Wegscheider said that he would like them to come to work at the hotel; that Johnson and Barton asked him about the Union and he replied by saying there would be no union there; that Johnson and Barton looked very unhappy; and that Wegscheider asked how they felt about that.

Wegscheider, in his testimony, acknowledged that he was asked whether it would be a union hotel. He averred that he told them that management would like to operate without outside interference; that it would probably open nonunion; and that the decision, as to whether the hotel remained nonunion, was not up to the hotel. He acknowledged that he asked them how they felt about it. He testified that he knew that the women had a long affiliation with the Union and in effect he was asking them whether they would work even if the hotel was not union.

Considering the testimony of all four witnesses, I believe that Wegscheider's explanation was reasonable. All four were credible witnesses and the essence of their testimony was very similar. The conversation came about because Wegscheider was actively trying to recruit them as employees. The hotel was opening nonunion and he openly told them that. He knew that they all had a long affiliation with the Union and he surely knew that some union activists will not work for a nonunion hotel. He in effect was trying to encourage them to come to work even though the hotel was nonunion. In context his question "How do you feel about it" was geared to an inquiry as to whether they would be willing to work or not. That did not constitute coercive interrogation concerning their union membership, activity, or sympathy.[7] To violate Section 8(a)(1) of the Act an employer has to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act. It would take a very strained interpretation of the conversation in question to find that anything said by Wegscheider constituted a violation of the Act.

As the General Counsel has failed to establish by a preponderance the credible evidence that Respondent engaged in any of the violations of the Act alleged in the complaint, I recommend that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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[7] Cf. *Service Master Cleaning Services*, 267 NLRB 875 (1983), where the Board held:

> The Board has long recognized that questions involving union membership and union sympathies in the context of a job interview are inherently coercive and thus interfere with Section 7 rights.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The General Counsel has not established by a preponderance of the credible evidence that Respondent violated the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The complaint is dismissed in its entirety.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.